

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland Avenue
(240) 777-6600

Case No. S-1041

PETITION OF GULF OIL PRODUCTS COMPANY

RESOLUTION TO REVOKE SPECIAL EXCEPTION

(Resolution Adopted May 22, 2002)
(Effective Date of Resolution: July 19, 2002)

EVIDENCE PRESENTED

1. Case No. S-1041 is a special exception granted by the Board of Appeals to Gulf Oil Products Company on November 23, 1984 to permit the construction and operation of a Gulf Service Station and Market.
2. The subject property is located at 8384 Colesville Road, Silver Spring, Maryland, in the CBD-1 Zone.
3. On September 27, 2000, a the Department of Permitting Services issued a Notice of Violation citing a number of violations of the terms and conditions of the original special exception, which was then being operated by Exxon Corporation. [Exhibit No. 38].
4. On April 17, 2000 the Board of Appeals received a memorandum from Stanley N. Garber, Zoning Investigator, Montgomery County Department of Permitting Services. Mr. Garber's memorandum describes his re-inspections of the subject property and his communication with Mr. Zoher, the owner of the station and Mr. Schwartz, the regional manager for Exxon, about the violations of the special exception. Mr. Garber's memorandum requests that the Board of Appeals convene a public hearing for the special exception holder to appear and address the violations.
5. Based upon Mr. Garber's memorandum and pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, on May 22, 2002, the Board of Appeals convened a show cause hearing on Case No. S-1041. A notice of the public hearing was mailed, by Certified Mail, to Gulf Oil Products at 8384 Colesville Road, Silver Spring, MD 20910. The Certified Mail Receipt showing the notice's delivery is entered into the record as Exhibit No. 36(b). The notice advised the special exception holders and property owners that "Failure of the property owner or of the special exception holder or their representative to

appear at the hearing may result in the issuance of an order revoking the special exception.”

6. Mr. Garber appeared at the public hearing and testified about his inspections of the subject property, and about his communications with Mr. Zohar and Mr. Schwartz. He entered into the record a copy of the September 27, 2000 Notice of Violation [Exhibit No. 38], and photographs of the subject property as of May 21, 2002, which he stated depict continued violations at the subject property. [Exhibit No. 39].

FINDINGS OF THE BOARD

1. Section 59-G-1.3(e)(3) of the Zoning Ordinance provides:

The notice of show cause hearing must state in detail the nature of the complaints received concerning the operation of the special exception and/or the nature of the alleged violations reported by the Department, and must state that the hearing is limited to a consideration and a determination of the validity of the allegations. The notice must further advise the special exception holder and the property owner that failure to attend and participate in the hearing may result in issuance of an order revoking the special exception.

The Board finds that between September 27, 2000 the date of the Notice of Violation and May 22, 2002, the date of the show cause hearing, the special exception holder and property owner had ample time to address the ongoing violations of the special exception. Further the Board finds that the special exception holder and property owner received proper notice of the show cause hearing. The Board finds the duration of the violations unacceptable, and the failure of the special exception holder and property owner to appear at the hearing not indicative of responsible operation of the special exception. Therefore, on a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that Case No. S-1041, Petition of Gulf Oil Products Company is **REVOKED**.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 19th day of July, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.